

# Montana State Legislature

**Exhibit Number: 4**

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## Justice at Stake c a m p a i g n

EXHIBIT 4  
DATE 4-10-07  
SB 202

### OVERVIEW OF THE 2006 COURT ELECTIONS AND REFERENDA

#### **Fundraising**

- Candidates for state Supreme Court seats combined to raise at least \$30 million\*
- Interest groups spent at least \$6.2 million more\*
- Fundraising records were established in **Kentucky, Georgia, Oregon** and **Washington**
- Candidates and interest groups combined to spend at least \$7.5 million in the contest for **Alabama** Chief Justice, making this the second most expensive court race in American history
- Three of the four winners for the **North Carolina** Supreme Court used a unique public financing program
- Interest groups and partisans also targeted lower court races: in **Illinois**, two candidates for a seat on the Illinois Court of Appeals raised over \$3.5 million, while in **Missouri**, Americans for Limited Government spent \$175,000 on three trial court campaigns

#### **Television Advertising**

- Television ads appeared in 10 of 11 states holding Supreme Court elections
- Candidates, interest groups and political parties combined to spend an estimated \$16.1 million on broadcast advertising airtime
- 90 percent of all interest group spending on airtime was sponsored by business

#### **Retention Elections**

- Three trial court judges – one in **Alaska** and two in **Utah** – were defeated for retention in 2006
- No high court justices were defeated in retention campaigns in 2006, though Justice Russel Nigro of **Pennsylvania** was unseated in 2005. Retention “yes” votes in 2006 high court elections ranged from 67 percent to 87 percent

#### **Ballot Measures**

- **Colorado**: A measure to impose retroactive term limits on the state’s appellate judges, and to shorten terms, was defeated 57-43 despite early polling showing strong support for judicial term limits
- **Hawaii**: A measure to remove the mandatory retirement age was defeated 57-43
- **Oregon**: Voters will continue to elect appellate court judges on a statewide basis after a measure to district those courts was defeated 56-44
- **South Dakota**: The “JAIL 4 Judges” measure was decimated, 89-11. Backers of “JAIL” have promised to bring a modified measure forward in 2008, and have identified **Nevada** as a potential additional target for 2008

\* - Fundraising figures will rise when final campaign reports are filed



## Justice at Stake c a m p a i g n

### JUDICIAL PUBLIC FINANCING IN NORTH CAROLINA: EARLY SUCCESSES

#### FAST FACTS:

- ✓ North Carolina had its first \$1 million Supreme Court race in 2000
- ✓ In 2002, the state legislature passed full public financing for statewide judicial elections, to go into effect in 2004, the first such program in the nation.
- ✓ **In its first cycle** the program applied to five appellate court seats, and 14 of 16 appellate court candidates enrolled in the public financing program. That same year, 12 of those 14 passed public trust thresholds by raising a minimum number of qualifying contributions. Four of five winners used public financing.
- ✓ **In its second cycle** in 2006, 8 of 12 candidates for six seats used the program. Five of six winners used the program.
- ✓ Voter engagement: To qualify, candidates must collect at least 350 contributions from registered voters, but in 2006, all eight candidates reported at least 500 donors. One candidate reported 830 donors.
- ✓ In two cycles of use, covering 11 seats, only one privately-financed candidate has outspent a publicly-funded opponent; rescue funds in the amount of \$155,000 were made available to the publicly-financed candidate, who won the campaign.
- ✓ The public financing program has not favored any particular class of candidates: Seats have been won by incumbents and challengers, women and men, whites and minorities, Republicans and Democrats.
- ✓ Role of 527 organizations: In 2006, a 527 group called "FairJudges.net" spent about \$250,000 in the final week of the campaign to endorse an experienced bi-partisan slate of Supreme Court candidates, exploiting an outdated definition of a "political ad". Rescue funds were not awarded to two candidates claiming to be eligible for aid because the ads did not meet the state's definition of electioneering. Whether this impacted the outcome of any race is unknown. Corrective legislation and state board of elections regulations are being drafted to provide a simple remedy for the 527 loophole.
- ✓ The administrative cost of the program is about \$40,000 annually

#### TESTIMONY FROM CANDIDATES:

"I had much more interest in my campaign and many more contributors to my campaign than ever before, since every voter could contribute even as little as \$10 and truly benefit the campaign. Once my campaign raised the required funds to qualify for public financing, I was then free to spend the remainder of the campaign focusing on my record, my qualifications -- and not on fund-raising."

- Judge Linda McGee (re-elected to the Court of Appeals in 2004)

#### OTHER STATES CONSIDERING PUBLIC FINANCING OF COURT RACES:

Illinois, Georgia, Michigan, Montana, New Mexico, Washington

JUDGE LINDA MCGEE  
N.C. COURT OF APPEALS

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March 20, 2006

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House Select Committee on Ethics and Governmental Reform  
Legislative Building  
Raleigh, NC 27601

Dear Committee Members:

I was proud to have participated in the first program for public campaign financing in the State of North Carolina, and to have directly benefitted from using those public campaign funds to win re-election to the N.C. Court of Appeals. Long before I announced that I would seek re-election, I was a strong supporter of the legislation that would assist North Carolina in continuing to have clean, fair elections of its appellate court judges without the growing influence of well-financed special interests. When I read the strong purpose of the N.C. Public Campaign Financing Fund in the proposed legislation, it was clear to me that both judges and the voting public would benefit from this new system of funding our appellate court races.

The aspirational language is striking:

The purpose of this Article is to ensure the fairness of democratic elections in North Carolina and to protect the constitutional rights of voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent to influence the outcome of elections, those effects being especially problematic in elections of the judiciary, since impartiality is uniquely important to the integrity and credibility of the courts.

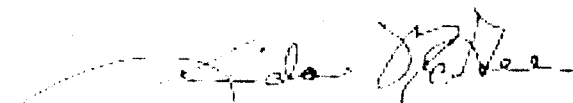
There was no question that I would certainly participate in the new public campaign financing program as an important part

of my re-election campaign. Almost every appellate court candidate — both Democrat and Republican — chose to participate in this exciting new opportunity. As with any new procedure, there were challenges, but they were effectively overcome because there was such confidence in this innovation.

I spent a great deal of campaign time informing the voters about how they could personally participate in the fund. As a result, there was more interest in my campaign and more contributors to my campaign than ever before, since every voter could contribute as little as \$10.00. Once my campaign raised the required funds to qualify for public financing, I was then free to spend the remainder of the campaign focusing on my record and my qualifications — and not on fund-raising.

A major improvement in the legislation provided that, for the first time, a voter guide about appellate court candidates be mailed to voters across the state. The voter guide gave voters valuable information about each of the judges so the voters could make an informed choice in casting their votes. There was more interest in judicial races when voters were better informed and felt more directly involved. In the past, voters often simply did not vote for judges because they had no effective way of knowing who was qualified and who was not. Public campaign financing in judicial races has provided better information to voters which has resulted in greater involvement by voters in judicial races, and which should continue to contribute to the election of capable, fair judges.

Very truly yours,



Linda McGee



**Justice at Stake**  
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**MARCH 2004 SURVEY HIGHLIGHTS**

**AMERICANS SPEAK OUT ON JUDICIAL ELECTIONS**

**Problems**

***Courtroom Decisions Influenced by Campaign Money?***

A strong majority of Americans – nearly 71 percent – believe that campaign contributions from interest groups have at least some influence on judges' decisions in the courtroom. Over 80 percent of African Americans expressed this view, including a majority (51 percent) who said contributions carried a "great deal" of influence.

***Will Special Interest Groups Take Judges Hostage?***

More than four in five respondents (82 percent) are very or somewhat concerned that the decision in *Republican Party of Minnesota v. White* (permitting candidates for judicial office to announce views on disputed issues) will result in special interest groups pressuring judicial candidates to stake out positions on controversial issues. More than 70 percent in every demographic subgroup are somewhat or very concerned. Those most concerned include Americans over 50 years of age, residents of Southern states, and those who are strongly ideological (progressive and very conservative).

**Solutions**

***Voters Want More Information***

Previous public opinion research has documented that voters are starved for information about judicial candidates. More than 67 percent of those surveyed said that receiving a nonpartisan voter guide containing background information on judicial candidates would make them more likely to vote in judicial elections. Only 27 percent said voter guides would make no difference to them. While support for guides was strong across the political spectrum, Republican support was strongest, with 75 percent saying receiving a nonpartisan guide would make them more likely to vote in judicial elections.

***BCRA-Style State Disclosure Laws are Strongly Supported***

The stricter disclosure laws for electioneering ads contained within the Bipartisan Campaign Reform Act (BCRA) of 2002 provide a model that Americans would overwhelmingly like to see emulated for their state elections, including judicial elections. By a margin of nearly six-to-one (82 percent favor, 14 percent oppose), Americans support the idea that sponsors of TV ads be required to disclose their list of donors so that the public can learn who paid for them.

*From a nationwide survey of 1,204 adult Americans conducted March 17-19, 2004, by Zogby International for the Justice at Stake Campaign. The margin of error is plus or minus 2.9 percentage points (higher in sub-groups).*



## Justice at Stake

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For Immediate Release

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### **Voter Rejection of Political Tampering with the Courts Doesn't Quell Special Interest Efforts in '06 Judicial Elections**

WASHINGTON, DC – 2006 proved to be the most threatening election yet for fair and impartial courts, despite clear warnings from Americans not to tamper with checks and balances. Voters rejected referenda, many of them bankrolled by out-of-state special interests, that would have tampered with courts in Colorado, Hawaii, Oregon and South Dakota. But judicial campaign contribution and advertising records were smashed in numerous states holding high court elections, even as special interests poured record money into *trial court* contests and demanded that would-be judges take sides in advance on hot-button issues. In states with well-established efforts to ward off the “new politics of judicial elections,” interest groups had far more difficulty getting traction.

“Special interest attempts to thwart impartial justice are here to stay,” said Bert Brandenburg, executive director of the Justice at Stake Campaign. “But 2006 showed that Americans will reject political tampering with the courts if they understand the threat.”

#### **Anti-Court Ballot Measures**

The most closely watched anti-court ballot measure, the so-called “JAIL 4 Judges” proposal in **South Dakota**, was dealt a devastating defeat. Ninety percent of South Dakotans rejected the measure, which would have stripped judicial immunity and established an unaccountable fourth branch of government to intimidate judges.

“JAIL supporters may try elsewhere, but South Dakotans showed that people don’t want radicals tampering with the rule of law by making judges accountable to fringe special interests,” said Brandenburg.

Special interest ballot measures designed to manipulate the functioning or composition of the courts in three other states were rejected:

- In **Colorado**, a measure to impose retroactive term limits on appellate court judges failed by a margin of 57 to 43 percent. "This is a huge credit to the broad coalition that supported the judiciary and opposed the term limits," former Colorado Justice Rebecca Kourlis, executive director of the Institute for the Advancement of the American Legal System (a Justice at Stake partner), told the *Denver Post*. "It is a credit to the voters that understood the amendment would make the judiciary more political."
- In **Oregon**, voters rejected a constitutional amendment designed to oust Portland-area judges by mandating districts for the state's appellate courts. "I think that Oregonians don't want these out-of-state special interest groups coming in and using Oregon as a testing ground for their partisan ideas," Jeff Green, who rallied opposition to the effort, told the Associated Press. "I think Oregonians have put their foot down."
- In **Hawaii**, voters rejected a measure to repeal the state's mandatory retirement age for judges. Opponents said the measure was designed to keep Democratic-appointed judges on the bench in order to deny the Republican governor new appointments.

In addition, in **Montana**, Constitutional Initiative #98 would have provided for the recall of judges over individual decisions—even though every judge there already stands for election. The measure was thrown off the ballot this fall due to a "general pattern and practice of deceit, fraud and procedural non-compliance" by out-of-state signature gatherers.

### **Spending and Advertising Records in Court Elections**

Voters also went to the polls in 22 contested Supreme Court races in 10 states on November 7. Campaigns for seats on America's high courts have turned into expensive, contentious and often partisan brawls in many states, and that trend accelerated this year as numerous states broke records in campaign fundraising and television advertising. "Vote no" campaigns were directed against judges facing retention elections in a series of states, including **Illinois, Iowa, Nebraska and Utah**.

Spending on television advertising by candidates, political parties, or third party interest groups eclipsed \$16 million. Ads appeared in 10 of 11 states with a contested Supreme Court election this year (compared to only 1 of every 4 states in 2000) according to data supplied by the Brennan Center for Justice, a Justice at Stake partner. Candidate fundraising records were set in at least four of the 11 states, and at least eight high court campaigns saw combined fundraising totals climb past \$1 million. Pre-election disclosures indicated that candidates themselves raised about \$30 million, a number that could skyrocket when final reports are filed. Interest groups in **Alabama, Georgia, Ohio and Washington** spent millions more supporting or opposing their preferred candidates.

Perhaps most disturbing, such trends appear to be seeping down the ballot: two candidates for an **Illinois** Court of Appeals seat raised more than \$3 million, making this



campaign the most expensive appeals court race in Illinois history, and probably the most expensive race for a non-high-court seat in American judicial history. The appeals court campaign drew much of the big money and special interest activity that smashed national Supreme Court fundraising records in 2004, when two candidates in the same southern Illinois district raised a combined \$9.3 million. In Tuesday's race, challenger Bruce Stewart was elected despite being out fundraised by his opponent by more than 2 to 1. In the same judicial district, candidates in a circuit court campaign raised over \$600,000, breaking state records. Americans for Limited Government (ALG), a Chicago-based interest group, dumped at least \$175,000 into a successful effort to unseat a circuit court judge in Cole County, **Missouri**.

The most expensive Supreme Court campaign of 2006 was the contest for **Alabama** Chief Justice. Incumbent Chief Justice Drayton Nabers withstood a bruising primary challenge from fellow Republican Justice Tom Parker, but was defeated in the general election by Democrat Sue Bell Cobb. Cobb becomes the lone Democrat on Alabama's high court. Combined, the three candidates reported over \$6.7 million in contributions through late October. Since 1993, candidates for the Alabama Supreme Court have raised over \$52 million, tops in the nation.

In **Georgia**, millions were spent on TV ads in one of the most negative judicial campaigns in American history. The Safety and Prosperity Coalition, an interest group that received the majority of its funding from the American Justice Partnership, an arm of the National Association of Manufacturers, reported raising over \$1.8 million in an effort to defeat Justice Carol Hunstein. In one of their ads, the SPC said: "Carol Hunstein...voted to throw out evidence that convicted a cocaine trafficker...[she] even ignored extensive case law and overruled a jury to free a savage rapist." Hunstein's campaign aired an ad attacking her opponent, Mike Wiggins: "Mike Wiggins was sued by his own mother for taking her money. He sued his only sister. She said he threatened to kill her while she was eight months pregnant." Justice Hunstein won re-election to the Georgia Supreme Court easily. She's the first judicial candidate in Georgia to raise over \$1 million for a campaign.

Interestingly, despite decisively outspending trial lawyers around the country, business groups were dealt a series of defeats, reversing a string of victories established in the 2002 and 2004 election cycles. The American Taxpayers Alliance, which has received funding in the past from the U.S. Chamber of Commerce, had backed Nabers, the ousted Chief Justice, in **Alabama**. The American Justice Partnership made donations to elect high court judges in **Georgia** and **Oregon**, and an appellate court judge in **Illinois**, and went 0 for 3 in those states. In **Washington**, national and state business groups failed to elect any of their preferred candidates despite million-dollar campaigns to defeat incumbents. Only in **Ohio** did business-backed candidates win election; that state's high court now has a 9-0 Republican composition. Data gathered by the Brennan Center for Justice indicated that, through October 22, 95 percent of third-party spending on television ads in high court races was paid for by business groups.

## Silver Linings

Despite a last minute advertising campaign by a 527 group backed by trial attorneys and major Democratic Party donors, **North Carolina's** system of public financing of appellate court campaigns proved that court campaigns can remain civil and that candidates can run solid statewide campaigns without huge injections of money from national special interests. Five of six winners at the appellate level used the public financing option. North Carolina's public financing system also received a boost from an October ruling from a federal judge dismissing election-year challenges from critics, saying: "In sum, plaintiffs have not shown a likelihood of success on the merits of any of their claims challenging [particular provisions] and North Carolina's public financing scheme as a whole."

The fear of an "extreme makeover" of the **Kentucky** judiciary did not come to pass, even though all but a handful of the state's judges appeared on the 2006 ballot. Though candidates for the Kentucky Supreme Court helped the state set a new fundraising record, in-state observers remarked on how civil most of the judicial races remained. Efforts by the Judicial Campaign Conduct Committee, chaired by Lexington attorney Spencer Noe, were critical to the election's civility. Kentucky voters were also able to get useful nonpartisan information about judicial candidates from nonpartisan websites like KYJudges.com (a project of Justice at Stake and Common Cause Kentucky) and a "wiki" website established by a political science class at the University of Kentucky.

## Pressure-Filled Questionnaires

Challenges to the professional codes of conduct that shield judges and judicial candidates from special interest intimidation continued to be a hot topic in the 2006 judicial elections. However, efforts by interest groups to demand "positions" on political issues did not meet with universal success. A questionnaire mailed to circuit court contenders in **Florida** was discarded by a majority of the candidates; only 15 percent responded to the group's question about a recent state Supreme Court decision on school choice. The same questionnaire demanded to know how many children each candidate had. Across the country, many of the candidates who ran on extreme "First Amendment" platforms, such as William O'Neill of **Ohio**, Tom Parker of **Alabama**, Rusty Duke of **North Carolina**, Wendell Griffin of **Arkansas**, and Rick Johnson of **Kentucky**, were rejected by voters.

Justice at Stake will be collaborating with many of its partners, including the Brennan Center for Justice and the Institute on Money in State Politics, on a fourth edition of its trademark "New Politics of Judicial Elections" report. The report will document and analyze campaign fundraising data, television advertising statistics, and the role of special interests in the 2006 judicial election cycle. To sign up to receive a copy of the report when it is published in the first quarter of 2007, send an email to [info@justiceatstake.org](mailto:info@justiceatstake.org)